IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 7 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MIHIR TEXTILE LTD

Versus

COMMISSIONER OF INCOME TAX

Appearance:
MR JP SHAH for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 29/08/2000

ORAL JUDGEMENT

This reference is at the instance of the assessee under Section 256(1) of the Income Tax Act. The following questions of law have been referred to this Court.

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that payment for Bank guarantee commission was an expenditure of capital nature? (For A.Y. 1976-77 to 1978-79.

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that expenditure due to exchange rate difference was an expenditure of capital nature? (For A.Y. 1976-77 & 1977-78.

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that export insurance and freight, export packing charges and export stiching charges were not eligible for weighted deduction u/s. 35-B of the Act? (For A.Y. 1978-79).

4. Whether on the facts and in the circumstances of the case, the Tribunal was right in rejecting the claim of the assesses for Investment Allowance u/s. 32-A with reference to electric installation, electrification in workshop and extension of cable trench? (For A.Y. 1978-79).

5. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that expenditure in connection with issue of bonus expenditure was expenditure of capital nature and not deductible in computation of total income? (For A.Y. 1978-79).

2. Learned Counsel appearing for the assessee and Revenue do not dispute that the questions no.1,2,3 and 5 are covered by the decisions of the Supreme Court and High Court.

3. The question no.1 is answered in favour of the assessee to be concluded by the decision of the Supreme Court in C.I.T. Vs. Sivakami Mills Ltd., 227 ITR 465.

4. The question no.2 is concluded against the assessee by the decision in New India Industries Ltd. Vs. C.I.T., 203 ITR 933 and Mihir Textile Vs. C.I.T., 225 ITR 327.

5. The question no.3 for weighted reduction under Section 35-B of the I.T. Act for export insurance, freight is concluded against the assessee by decision in C.I.T. Vs. Official Liquidator, Ahmedabad Manufacturing and Calico Printing Co.Ltd., 244 ITR 156 and so far as export stiching charges is concerned, it is concluded against the assessee by the decision in Wintex Mills Ltd. vs. C.I.T., 205 ITR 227.

6. The question no.5 is also concluded against the assessee by the decision of the Supreme Court reported in Brooke Bond India Ltd. Vs. C.I.T., 225 ITR 798. The only question that survives for being answered by us is question no.4 which is as under:-

> "4. Whether on the facts and in the circumstances of the case, the Tribunal was right in rejecting the claim of the assesses for Investment Allowance u/s. 32-A with reference to electric installation, electrification in workshop and extension of cable trench? (For A.Y. 1978-79)."

At the outset, Learned Counsel did not press his claim for investment allowance under Section 21-A for cable trench as the amount involved is very small. On behalf of the assessee, however claim for investment allowance under Section 32-A with reference to electric installation and electrification in workshop has been pressed.

7. As is pointed out by the Learned Counsel for the assessee in the assessment order, the assessee had claimed a sum of Rs.15492/- as investment allowance for electric installation in loom shed and Rs.30,843/- for electrification in mechanical workshop. The said claim for investment allowance has been disallowed. The Commissioner of Appeals maintained the disallowance by observing:-

"22.2 Regarding items No.5, 6 & 7, these are electric installation and unless it is established that they are part and parcel of the Plant & Machinery then only investment allowance is admissible. The description given does not indicate that these can be treated as part & parcel of the machinery and plant. These are electrical installation supplying power to the `Plant and Machinery'. The I.T.O. is right, therefore, in rejecting the claim of the assessee investment allowance on these items.

The Appellate Tribunal maintained the disallowance by observing in its order thus:-

"31. After hearing both the parties, we are of the opinion that the assessee's claim was rightly rejected in so far as electrification work is concerned. So far as cost of trolly is concerned the assessee's claim must succeed as it would be a part of the plant used in the process of manufacture of textiles. The claim in this regard is therefore allowed. The assessee has claimed investment allowance in respect of the following items.

1. Duplicating Machine Rs.11,655
2. Electric calculating machine for the factory. Rs. 5,625
3. Typewriter in the factory Rs. 3,903
4. Internal telephone installed in the factory. Rs. 1,618
5. Electric installation in loom shed Rs.15,492
6. Electrification in mechanical workshop. Rs.30,843
7. Extension of cable trench Rs. 2,416

The authorities below rejected the claim of the assessee on the ground that the investment allowance was admissible on such items of machinery which are purchased by the assessee and used in the production or manufacture of articles or things. Since the aforesaid items did not fulfil the above test the claim of the assessee was not tenable. In our opinion the assessee's claim has been

rightly rejected except in regard to item No.4 relating to internal telephone. So far as this item is concerned in view of the decision reported at 122 ITR 203 the assessee's claim in regard to the said item must succeed."

8. Learned Counsel for the assessee placed reliance on Division Bench decision of Calcutta High Court in 1994 296 ITR Page 92 in the case of Commissioner of Income Tax Vs. Tribeni Tissues Ltd and the Division Bench decision of the Bombay High Court in 1990 186 ITR 500 in Zenith Steel Pipes Ltd. Vs. Commissioner of Income Tax. The Taxing Authorities have disallowed the claim for investment allowance under Section 32-A by holding that electrification and electrical installation were not investment for the Plant.

9. For the purpose of availing investment allowance under Section 32-A of the Act, the equipments or installations even though not directly used in the manufacturing process should be necessary for it. The Division Bench decision of the Calcutta High Court in the case of Tribeni Tissues Ltd. (Supra) rejecting the similar contention of the Revenue, held as under, with which we find ourselves in respectful agreement:-

" that the Assessing Officer had made a demarcation as between machines and equipment used directly in the manufacturing process and machines and equipment used in the accessory part of the manufacturing process. Such division of the manufacturing process did not stand to reason or practicality. One may or may not conceive of certain parts or stages of the process as principal process and the rest as accessory process but that makes no difference to the fact that all processes taken together constitute an indivisible integral process. As a matter of fact, all machinery and equipment that is necessary to make the assesse's manufacturing unit in a state of operational integration pertain to its manufacturing process, because there could not be any manufacture unless this operational integration was achieved after installation of the plant and the plant goes operational. Therefore, any machinery or plant having a link, however minor, in the total process of the operational integration should be taken as machinery or plant pertaining to the manufacturing process. Therefore, the assessee

was entitled to investment allowance under Section 32A on motors, electric installations, underground cables, overhead cables and air-conditioning machines."

From the judgment of the Tribunal, we find that item no.14 i.e. claim for investment allowance for telephone installation in the sum of Rs.1680/- was allowed on the decision reported in Sivakami Mills Ltd. Vs. C.I.T, 120 ITR 211. Having thus allowed telephone installation charges as investment allowances, it is rather surprising that the Tribunal did not accept the claim of the assessee for investment allowance so far as the electrical installations and electrification in mechanical workshop. It is not difficult to see that these electrical installations and electrification in mechanical workshop were necessary for the manufacturing processes in the Plant. The decision of the Division Bench of the Bombay High Court in the case of Zenith Steel Pipes Ltd (Supra) also fully supports the contention advanced on behalf of the assessee.

10. For the reasons discussed above, in our opinion, the question no.4 on the claim of the assessee for investment allowance under Section 32 (A) of the Act with respect to electrical installation and electrification in mechanical workshop has to be allowed. The question no.4 is answered in favour of the assessee. The reference application is accordingly disposed of with no orders as to costs.

(D.M.Dharmadhikari, CJ)

(A.R.Dave, J)

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